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ATTORNEYS FOR COMPASS BANK

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

Maluhia Eight, LLC,

Debtor.

§  
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Case No. 10-30986-hdh-11

**MOTION OF COMPASS BANK  
FOR RELIEF FROM AUTOMATIC STAY**

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWELVE (12) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

NOW COMES Compass Bank and files this Motion of Compass Bank for Relief from Automatic Stay ("Motion to Lift Stay") in the above-captioned case ("Case"), and in support thereof would respectfully show as follows:

**I.**

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter constitutes a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (G), and (O).

2. Venue of this Case and this Motion to Lift Stay is proper before this Court in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicate for relief requested in this Motion to Lift Stay is 11 U.S.C. § 362(d).

**II.**

**FACTUAL BACKGROUND**

4. On February 8, 2010, (“Petition Date”), Maluhia Eight, LLC (“Maluhia” or “Debtor”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

5. Prior to the Petition Date, Maluhia executed a Promissory Note dated June 13, 2008 and payable to Compass Bank in the original principal amount of \$3,565,000.00 (the “Note”). A true and correct copy of the Note is attached hereto as Exhibit “A.”

6. The Note is secured by that certain Mortgage executed by Maluhia and filed under Document No. 3758610 in the Real Property Records of the State of Hawaii (the “Mortgage”). The Mortgage grants a security interest and lien in the real property described in Exhibit “A” to the Mortgage (“Real Property”), together with all improvements, minerals and fixtures residing in or affixed to the Real Property, all easements, rights, water, water rights, rights of way, appurtenances and rents associated with the Real Property and any and all

leasehold rights or options related to the Property (collectively, and as more fully described in the Mortgage, the “Property”). A true and correct copy of the Mortgage is attached hereto as Exhibit “B.”

7. As of February 23, 2010, the total amount due to Compass Bank under the Note and Mortgage was \$3,710,907.72.

8. The Schedules filed by Maluhia reflect that there may be over 40 other secured claims against the Property as well as unpaid real estate taxes in excess of \$60,000 owed on the Property to the County of Maui, Hawaii. The Schedules reflect total secured claims against the Property in the amount of \$8,490,456.00 and a value of the Property in the amount of \$6,000,000.00.

9. This is a single asset real-estate case, and the only personal property listed by the Debtor as assets are account receivables that may be owed to it by two other entities – PRM Realty Group, LLC and M-35, LLC. PRM Realty Group, LLC, who is listed as owing over 85% of the account receivables, is listed on Schedule H as a co-debtor of the Debtor with respect to a number of its debts and is also a debtor in a separate bankruptcy case.

### **III.**

#### **RELIEF REQUESTED**

10. Compass Bank seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d) to exercise all of its legal, contractual and equitable rights in and to the Property and to apply proceeds from the disposition of the Property to the indebtedness owed by Debtor to Compass Bank under the Note and Mortgage.

11. 11 U.S.C. 362(d)(1) provides that a court shall grant relief from the automatic stay for “cause”. Here, sufficient cause exists to lift the automatic stay because the Debtor cannot

adequately protect Compass Bank's interest in the Property. The Debtor's Schedules do not list any revenue-generating contracts associated with the Property, and the Statement of Financial Affairs further state that the Debtor has had no income from operation of its business during any of the previous three years. Significant tax claims also exist against the Property, which continue to accrue and for which no funds of the Debtor are available to satisfy.

12. Compass Bank is also entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(2) since the Debtor has no equity interest in the Property nor is the Property necessary for an effective reorganization. The Debtor's Schedules state that the secured claims against the Property far exceed the value which the Debtor lists for the Property. Though Compass Bank reserves the right to dispute the value the Debtor has attributed to the Property, the admission by the Debtor in its Schedules as to a lack of equity is binding on the Debtor.

13. Given the decline in the real estate market (especially for properties similar to the Property), a significant likelihood exists that the value of Compass Bank's collateral will continue to erode unless Compass Bank is given stay relief as requested herein.

WHEREFORE, PREMISES CONSIDERED, Compass Bank respectfully requests that the Court enter an order (a) granting Compass Bank relief from the automatic stay to permit Compass Bank to pursue available remedies with respect to the Property; (b) waiving the requirements of Bankruptcy Rule 4001(a)(3) to permit Compass Bank to enforce and implement immediately any order of this Court granting relief from the automatic stay; and (c) for such other and further relief to which Compass Bank may be entitled.

Respectfully submitted,

By: /s/ Kenneth Stohner, Jr.

Kenneth Stohner, Jr.

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### **CERTIFICATE OF CONFERENCE**

This is to certify that on the 5<sup>th</sup> day of March, 2010, the undersigned attempted to contact the office of Pronske and Patel, P.C., attorneys for Debtor, to discuss the relief sought in this Motion to Lift Stay but was unable to reach anybody at that office at the time of call.

/s/ Jeremy S. Mack

Jeremy S. Mack

### **CERTIFICATE OF SERVICE**

This is to certify that on this 5<sup>th</sup> day of March, 2010, a true and correct copy of the foregoing, without exhibits, was served via electronic mail and/or by United States first class mail, postage prepaid, on the following parties (exhibits available upon request to the undersigned attorney):

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